

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 SECOND JUDICIAL DISTRICT

3 STATE OF ALASKA, )

4 Plaintiff, )

5 vs. )

6 EDWARD TOCKTOO, )

7 Defendant. )

8 Case No. 2NO-S98-38 CR )

9  
10 TRANSCRIPT OF PROCEEDINGS

11 HEARING ON DEFENDANT'S MOTION FOR NEW COUNSEL

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HEARING ON DEFENDANT'S MOTION FOR NEW COUNSEL

BEFORE THE HONORABLE BEN ESCH  
Superior Court Judge

Nome, Alaska  
May 14, 1998  
1:30 o'clock p.m.

APPEARANCES:

FOR THE PLAINTIFF:

JOHN VASEK  
District Attorney  
KEVIN BURKE  
Assistant District Attorney  
Box 160  
Nome, Alaska

FOR THE DEFENDANT:

KRISTEN J. BEY  
Assistant Public Defender  
Box 203  
Nome, Alaska

P R O C E E D I N G S

2NOA-3785

1713

THE CLERK: Superior Court for the State of Alaska,  
Second Judicial District, is now in session, the Honorable Ben  
Esch, Superior Court Judge, presiding.

THE COURT: Please be seated. On the record here in  
the Superior Court matter of *State versus Edward Tocktoo*.

This is case 2NO-S98-38. This matter's been set on for a --  
at the defendant's request for a motion. Ms. Bey, can you --

MS. BEY: A little clarification?

THE COURT: Little bit.

MS. BEY: Mr. Tocktoo was -- I guess it was on  
Tuesday, I guess, was the last time we were talking, and he's  
dissatisfied with me and is wanting to ask the court to give  
him a different lawyer.

THE COURT: Mr. Tocktoo, I'll be happy to listen to  
what you have to say; however, you need to understand that the  
process is not one that allows you to pick and choose. So if  
there's some reason -- particular reason why you feel you need  
a new attorney, I'd be happy to hear it, but just sort of  
generally unhappy with is not going to make it, is that clear?

MR. TOCKTOO: Yes.

THE COURT: All right.

MR. TOCKTOO: It's just -- I just have a conflict of

1 interest in her, and I feel she's not representing me right.

2 THE COURT: Okay. Anything else?

3 MR. TOCKTOO: No, Your Honor.

4 THE COURT: All right. Now, when you say there's a  
5 conflict of interest, in the law that's sort of a specific  
6 term. It means that she's got somehow divided loyalties,  
7 she's got some interest in somebody else as well as your own  
8 but representing you. Who would that other person be?

9 MR. TOCKTOO: It -- the way I see it, it's just like  
10 she was just trying to (indiscernible) me admit to these  
11 crimes that are being charged on me.

12 THE COURT: Well, but that's not a conflict of  
13 interest, you understand?

14 MR. TOCKTOO: Yes.

15 THE COURT: If she represented a victim, if she  
16 represented a co-defendant--but that doesn't apply in this  
17 case--if she had some personal friendship or some particular  
18 reason why her loyalty, she had some particular involvement  
19 with somebody else in this case, that might be something, but  
20 conflict of interest is a special sort of circumstance. So do  
21 you have any reason to believe she's got any connection with  
22 anyone else in this case?

23 MR. TOCKTOO: No.

24 THE COURT: Okay. So let's back up, then. The  
25 other ground you talked about is you don't think she's working

1 hard enough to represent you.

2 MR. TOCKTOO: Yes.

3 THE COURT: All right. And what -- what's that  
4 based on?

5 MR. TOCKTOO: Just --

6 MS. BEY: I think the other thing that Mr. Tocktoo  
7 mentioned, the lack of confidence, I think probably what also  
8 he's saying is that there just -- he doesn't feel there's an  
9 attorney-client relationship here, that he doesn't -- that  
10 that's broken down and he doesn't feel like he has confidence  
11 in what, if anything, I'm doing. I think that's probably what  
12 he's trying to say to the court.

13 THE COURT: All right. So, Mr. Tocktoo, you really  
14 don't have any confident in your lawyer, is that what you're  
15 saying?

16 MR. TOCKTOO: Yeah.

17 THE COURT: And -- and that's based on the fact that  
18 the two of you have discussed possible resolutions of this  
19 case with something other than a jury finding you not guilty  
20 and you going home?

21 MR. TOCKTOO: No, that's not -- I mean, it's not  
22 that. I just don't know how to put it. I...

23 THE COURT: And I realize this is not your normal  
24 area. I mean, you know, you don't operate in a courtroom like  
25 I do and like Ms. Bey does and the prosecutor. This is where

1 we work, and we understand what we're doing, and we have  
2 certain words we use, but I need some sort of reason other  
3 than, man, I just don't much like her, I mean, I'm not happy.  
4 I -- we just don't have enough attorneys that that's grounds  
5 for getting a new attorney when the state provides your  
6 defense.

7 MR. TOCKTOO: Uh-huh (affirmative).

8 THE COURT: I mean, Ms. Bey has practiced in front  
9 of me for a long time, and she's always worked hard for the  
10 clients that I've seen, done a good job. I -- from some of  
11 the materials that have been filed on your behalf, it appears  
12 that you've had other attorneys in the past, and maybe you're  
13 somehow measuring what you're seeing she's doing with what  
14 they did in the past, I don't know. But I can indicate to you  
15 that she's always seemed to be prepared, on top of the issues,  
16 does a good job in front of a jury, communicates well, does  
17 all the things that a lawyer should do. If you could give me  
18 some particular --

19 MR. TOCKTOO: I think I would -- when you say  
20 prepared, she was saying she's not prepared to take my case to  
21 trial and it would be taking most of her time since she's got  
22 other cases to do, too.

23 MS. BEY: We --

24 MR. TOCKTOO: She's been replying that to me.

25 MS. BEY: Currently, Mr. Tocktoo's case is set for

1 trial next week, and I've --

2 THE COURT: Indic --

3 MS. BEY: -- been telling him that I'm not ready to  
4 do a jury trial next week, and that based on needing some  
5 answers to motions that we filed --

6 THE COURT: Right.

7 MS. BEY: -- that we would be -- I would be  
8 requesting and that if he wants a trial fully -- I mean, we  
9 would -- if he insists on trial next week, we could have trial  
10 next week, but --

11 THE COURT: You can't have trial next week because  
12 these motions are still outstanding. I mean, those are issues  
13 that have nothing to do with her. It's simply that I've been  
14 unavailable to address these motions, and I think it's  
15 unlikely that I'm liable to have an answer. Matter of fact, I  
16 was working on this this morning, but it's unlikely I'm going  
17 to have an answer in this case in time to have trial begin on  
18 Tuesday, and that's not her fault. She's got -- a motion's  
19 filed, the state's opposed it, she's given me a good -- she's  
20 given me a reply. But when she says she's not ready to  
21 proceed, it's not because she hasn't been doing anything.  
22 It's simply because there are other things that -- my fault.

23 MR. TOCKTOO: I just want her off my case, Your  
24 Honor.

25 THE COURT: I'm sorry?

1 MR. TOCKTOO: I just want her off my case.

2 THE COURT: I understand you -- that would be your  
3 choice if you had the choice. Unfortunately, Mr. Tocktoo, you  
4 don't have the choice. You just can't say, well, if I had my  
5 drothers, I'd rather have somebody else. And I'm sorry  
6 that -- if you could give me a good reason, I'd certainly be  
7 happy to listen to it. And I realize that anytime somebody  
8 comes in here and says, judge, I want a new lawyer, that  
9 creates some tension and problems between the lawyer and the  
10 client, but I'm just -- without more -- without better reason,  
11 I'm just not going to be able to grant your motion.

12 MR. TOCKTOO: What about that she makes a motion  
13 under rule 1 -- Alaska Court's Rule 116 to withdraw?

14 THE COURT: Well, what would be your grounds for  
15 that, irreconcilable breakdown of the attorney-client  
16 relationship, Ms. Bey?

17 MS. BEY: Well, I'll talk with Mr. Tocktoo again  
18 about that, and that may be possible. I don't -- I'll talk  
19 with him --

20 THE COURT: Okay.

21 MS. BEY: -- kind of where we are from here and --

22 THE COURT: Sure. Well, Mr. Tocktoo, unfortunately,  
23 without better evidence and better reasons on your part about  
24 why you need a new attorney, I'm going to have to deny your  
25 request for a new lawyer.



1 MR. TOCKTOO: Uh-huh (affirmative).

2 THE COURT: You two can talk some more, and you may  
3 be able to make some further efforts in some direction, but at  
4 this point I'm going to deny the motion.

5 Anything further at this time?

6 MS. BEY: No, Your Honor.

7 THE COURT: Very well. We'll stand in recess.

8 THE CLERK: Please rise. Court will stand in recess  
9 subject to call.

10 (Off record)

11 2025

12 - END OF PROCEEDING -

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TRANSCRIBER'S CERTIFICATE

I, M. GAYLENE LARRECOU, do hereby certify:

That the foregoing pages 1 through 9 contain a full,  
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proceedings; that the transcription was performed by me to the  
best of my knowledge and ability from the audio recording.

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M. GAYLENE LARRECOU

Date

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